

TEXAS APPRAISER LICENSING  
AND CERTIFICATION BOARD

vs.

DANIEL JOSEPH O'LEARY  
TX-1324045-R

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DOCKETED COMPLAINT NO. 09-224

### **AGREED FINAL ORDER**

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2011, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the certification of Daniel Joseph O'Leary (Respondent). The Board makes the following findings of fact and conclusions of law and enters this Order:

In order to conclude this matter Daniel Joseph O'Leary neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order. The Board makes the following findings of fact and conclusions of law and enters this Order in accordance with TEX. OCC. CODE § 1103.458:

### **FINDINGS OF FACT**

1. Respondent, Daniel Joseph O'Leary is a state certified residential real estate appraiser, holds certification number TX-1324045-R and has been certified by the Board during all times material to this complaint.

2. Respondent is subject to the jurisdiction of the Board, the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE Chapter 1103 (Vernon 2007) (the Act), the Rules of the Board, 22 TEX. ADMIN. CODE §§153, 155, 157 (West 2007) (the Rules), and the Uniform Standards of Professional Appraisal Practice (USPAP) in effect at the time of the appraisal.

3. On or about March 23<sup>rd</sup>, 2006, the Respondent appraised real property located at 872 Lazaro Place, Canutillo, Texas 79835 ("the property").

4. On or about June 8<sup>th</sup>, 2009, the Complainant, Deloris L. Kraft-Longoria, filed a staff-initiated complaint with the Board based on allegations that the Respondent had produced an appraisal report that contained various deficiencies.

5. On or about February 25<sup>th</sup>, 2010, the Board, in accordance with the mandate of the Administrative Procedure Act (the APA), TEX. GOV'T CODE ANN. Chapter 2001, notified Respondent of the nature and accusations involved and Respondent was afforded

an opportunity to respond to the accusations alleged by the Complainant. Respondent's response to the complaint was received.

6. Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the property:

- a) Respondent failed to comply with the record-keeping provisions of the Ethics Rule because his work file lacked the documentation necessary to support his analyses, opinions and conclusions;
- b) Respondent failed to identify and report the site and improvement(s) descriptions adequately;
- c) Respondent failed to consider and report easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances or other items of a similar nature;
- d) Respondent failed to provide support for his conclusions concerning the effect on use and value of existing land use regulations, economic supply & demand, physical adaptability of the real estate and market area trends;
- e) Respondent failed to provide a summary of his basis and underlying rationale for his determination of the property's highest and best use;
- f) Respondent failed to use an appropriate method or technique to develop an opinion of site value;
- g) Respondent failed to collect, verify, analyze and reconcile the cost new of improvements and failed to employ recognized methods and techniques in his cost approach;
- h) Respondent failed to collect, verify, analyze and reconcile comparable sales data adequately and failed to employ recognized methods and techniques in his sales comparison approach;
- i) Respondent failed to analyze all sales of the subject within three years prior to the effective date of the appraisal;
- j) Respondent failed to appraise proposed improvements only after examining and retaining plans and specifications, evidence of probable time of completion and appropriate support for cost, anticipated earnings, occupancy, and anticipated competition at the time of completion;
- k) Respondent's report contains substantial errors of commission or omission as detailed above which resulted in a misleading appraisal report for the property.

7. Respondent made material misrepresentations and omitted material facts in his appraisal report as detailed above.

## **CONCLUSIONS OF LAW**

1. The Texas Appraiser Licensing and Certification Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE §§ 1103.451-1103.5535.

2. Respondent violated the following provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3): USPAP Ethics Rule (record keeping provisions); USPAP Standards: 1-2(e)(i) & 2-2(b)(iii); 1-2(e)(iv) & 2-2(b)(ix); 1-3(a) & 2-2(b)(ix); 1-3(b) & 2-2(b)(x); 1-4(b)(i) & 2-2(b)(ix); 1-4(b)(ii) & 2-2(b)(ix); 1-1(a) & 1-4(b); 1-4(a) & 2-2(b)(ix); 1-1(a) & 1-4(a); 1-5(b) & 2-2(b)(ix); 1-4(h) & 2-2(b)(ix); 1-1(a); 1-1(b); 1-1(c); and, 2-1(a).

3. Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(9) by making material misrepresentations and omitting material facts from his appraisal report.

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that the Respondent shall:

- 1) Attend and complete a minimum, 15 classroom-hour course in USPAP;
- 2) Attend and complete a minimum, 15 classroom-hour course in Residential Report Writing; and,
- 3) Comply with all provisions of the Act, the Rules of the Board, and USPAP in the future, or be subjected to further disciplinary action.

**ALL CLASSES** required by this Agreed Final Order must be classes approved by the Board and must be completed within **TWELVE MONTHS** of the date of this Order and documentation of attendance and successful completion of the educational requirements of this Order shall be delivered to the Board on or before the end of the twelve-month period indicated. None of the classes or seminars required by this Order may be taken through correspondence courses. Unless otherwise noted above, all classes must be in-class, have an exam, and Respondent must have a passing grade on the exam given in each class. None of these required classes will count toward Respondent's continuing education requirements for certification. Respondent is solely responsible for locating and scheduling classes to timely satisfy the terms of this agreement.

Failure to comply with any of the terms of this Agreed Final Order within the time allotted shall result in **IMMEDIATE SUSPENSION** of the Respondent's certification pursuant to notice to the Respondent from the Board indicating that the Respondent has not fulfilled the requirements of this Agreed Final Order.

**ANY SUCH SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS.** Respondent shall be notified of any such suspension or lifting of probation by certified mail, return receipt requested, to the last known address as provided to the Board. If Respondent's certification is suspended on such a basis, the suspension shall remain in effect until such time as Respondent pays the Administrative Penalty or takes and passes the required educational courses and provides adequate documentation of same to the Board.

Respondent, by signing this Agreed Final Order, waives the Respondent's right to a formal hearing and any right to seek judicial review of this Agreed Final Order. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's web site.

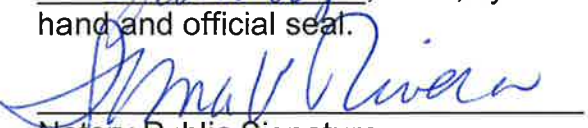
THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 12 day of Jan, 2011.

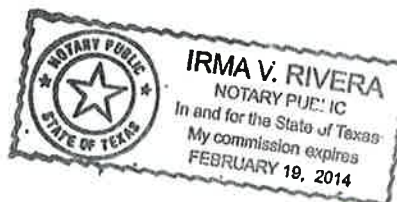
  
DANIEL JOSEPH O'LEARY

  
TED WHITMER, ATTORNEY FOR  
RESPONDENT

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 12<sup>th</sup> day of January, 2011, by DANIEL JOSEPH O'LEARY, to certify which, witness my hand and official seal.

  
Notary Public Signature

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Notary Public's Printed Name



Signed by the Standards and Enforcement Services Division this 18<sup>th</sup> day of February, 2011.



Troy Beaulieu, TALCB Staff Attorney

Signed by the Commissioner this 18<sup>th</sup> day of February, 2011.



Douglas Oldmixon, Commissioner  
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 18<sup>th</sup> day of February, 2011.



~~James B. Ratliff~~, Chairperson Luis DeLa Garza  
Texas Appraiser Licensing and Certification Board